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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,795	06/23/2003	Morris Samelson	P-5435(DIV2)	7990

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EXAMINER

CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 07/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/601,795

Applicant(s)

SAMELSON ET AL.

Examiner

Lakshmi S. Channavajjala

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-21 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

DETAILED ACTION

Receipt of RCE, amendment, remarks and affidavit all dated 6-27-05 is acknowledged.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6-27-05 has been entered.

Claims 1-21 are pending in the instant application.

The following new rejection has been applied to the instant claims:

Claim Objections

A series of singular dependent claims is permissible in which a dependent claim refers to a preceding claim which, in turn, refers to another preceding claim. Instant claims 5-11 and 13-16, which recite a different carrier medium, are improperly dependent on the preceding claim, whereas the generic limitation "all-natural carrier medium" is present in claim 3. It is suggested to applicants to correct the instant claims to depend from claim 3. Similarly, claims 13-16 recite a specific essential oil and should be dependent upon claim 12, instead of the preceding claims.

Claim Rejections - 35 USC § 112

Claims 1-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Instant claims recite the new limitation "anhydrous", which constitute new matter that is not supported by the instant specification. A careful review of the instant disclosure does not reveal any support for the claimed anhydrous composition and thus does not comply with the written description requirement.

Claim Rejections - 35 USC § 103

Claims 1-3 and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over KR 149428 (KR) in view of US 6,458,388 to Genis or Genis in view of KR.

KR teach a cosmetic composition comprising a large quantity of salt, about 15%-85% of Dead Sea Salt or bay salt or bamboo salt, having a particle size in the range of 0.1mm to 5.0 mm (abstract). The particle size distribution on page 13 of the instant specification states that the granularity of the instant Dead Sea particles is even ultra fine than the known particles, greater than 90%, which pass than 1.7mm to 4mm. Thus, it is understood from the specification that the particles of instant invention are finer than the 1.7 mm and KR teaches particles that are as small as 0.1 mm and thus meet the claimed particle size. With respect to the limitation "anhydrous", see the new matter

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rejection. KR does not teach the steps of heating and cooling. KR teaches the composition as a cosmetic scrub.

Genis teaches cosmetic scrub composition comprising Dead Sea salt granules, having a particle size of 0.1-0.3 mm, which is less than the claimed size (col. 2, lines 28-60). With respect to subjecting the precursors to consecutive heating and cooling cycles as claimed, Genis teaches the steps of mixing Dead Sea salt with an emulsifier at a temperature higher than room temperature, homogenizing the mixture and cooling; and subjecting the mixture to another heating and cooling cycle (col. 3, lines 40-60).

With respect to the limitation that the particles do not rapidly settle out of carrier medium, Genis discloses Dead Sea particles of same particle size and in a cosmetic medium containing vitamin E, which is also described in the instant specification (page 19). Accordingly, absent showing evidence to the contrary, it is implicit that the particles of Genis or KR do not settle out of carrier medium. Instant claims recite at least 50% processed, but does not state if 50% is pertaining to the concentration of Dead Sea salts in the composition.

Genis fails to teach the exact claimed temperatures for heating, cooling, cooling the process vessel after heating step to the claimed temperature and the rate of cooling as claimed. However, Genis teaches the general process of subjecting the components (precursors) of the cosmetic composition containing Dead Sea salts. In particular, Genis teaches heating at a temperature of 10-20 degrees C (approximately between 75 to 80 degrees C) higher than room temperature (which ranges between 18 to 32 C) and cooling to slowly to a temperature of 45 degrees C (col. 4, lines 4-14). Instant claims

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recite heating to 65 degrees C and cooling to 42 degrees C, which is not significantly different from the temperatures taught by Genis.

Both KR and Genis teach compositions containing Dead Sea salts for the achieving the same cosmetic effect i.e., as a scrub for massaging skin. KR suggests concentration of salts as high as 85% by total weight of the composition so as to enhance massage and blood flow promoting effect. Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to use a higher concentration of Dead Sea salts in the composition of Genis because KR suggests an enhanced blood-flow promoting and skin moisturizing/massaging effect. Alternatively, it would have been obvious to one of an ordinary skill in the art at the time of the instant invention to employ the process steps of Genis in preparing the composition of KR, and further to optimize the temperature range or exact temperatures of heating and cooling cycles, such that a homogenized cream containing Dead Sea salt granules, which is stable upon storage and still achieve the desired skin scrubbing effect (col. 5, lines 40-55).

Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over KR 149428 (KR) in view of (Genis), as applied to claims 1-3 and 17-21 in view of EP 1074245 (EP '245).

Genis as well as KR fail to teach the specific essential oils of instant claims.

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EP '245 teaches cosmetic composition containing Dead Sea mineral salts that are granular in nature, for the treatment of skin itching caused by Psoriasis or for skin exfoliating or scrubbing. The composition of EP '245 contains 5% Dead Sea salts and other herbs and the instant claimed aromatic essences such as lavender, chamomile, calendula etc., for skin relaxing or other therapeutic effects (Table on page 9 continued on page 10). EP '245 also teaches emollients and waxes such as vegetable oils, lipo wax etc (page 5, paragraph 0053; table on page 6, and page 4, paragraph 0043). Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to include cosmetic aroma agents such as chamomile, lavender and calendula in the cosmetic composition containing Dead sea salts of Genis or KR, because EP '245 suggests that the composition contains granular Dead Sea mineral salts in an amount sufficient to improve properties of the cosmetic and cleansing composition (Paragraphs 0019, 0020 & 1:10 ratio, Para 0059), to provide smoothness, decrease lumpiness, itchiness or edema of the skin and that the aroma agents help in protecting skin from damage due to itching, flaking, eczema etc., impart a pleasant and tactile feeling (emollients); improve circulation and relaxation (herbs and aroma agents). Further, The process of preparing the composition (page 7) of EP '245 involves a homogenous mixing, which is the same as instant, because instant application also describes the use of ultra fine Dead Sea salts for a homogenous mixing so as to maintain uniformity of the solid suspension. Instant application also describes the same application of Dead Sea salts as that of EP '245. Thus, the expected result is to achieve

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an effective treatment for reducing itching and increasing smoothness of skin with Dead Sea salts and improved relaxation with the aromatic agents.

Claims 4- 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over KR 149428 (KR) in view of (Genis), as applied to claims 1-3 and 17-21 in view of 5,997,889 to Durr et al (Durr).

KR and Genis fail to teach the claimed oils. Genis teaches oils such as sunflower oil and KR teaches mineral oil.

'889 teaches hand and body cream for skin ailments such as dry, itchy skin, eczema, psoriasis etc., comprising oils such as almond oil, jojoba oil, vitamin e oil, for moisturizing and conditioning of skin (col. 2) and beeswax for forming a protective barrier (col. 3). Further, '889 teach addition of fragrances such as rosewood, chamomile, calendula, lavender, etc (col.4, lines 43-58), as essential oils for providing immediate relief from skin discomfort. It would have been obvious for one of an ordinary skill in the art at the time of the instant invention to include the emollients such as jojoba oil, waxes and fragrances/essential oils of '889 in the composition of Genis (or KR) containing Dead sea salts because '889 teaches the ingredients for moisturizing and providing relief to psoriatic or itchy skin conditions. Therefore, a skilled artisan would have expected to achieve a more effective composition for treating psoriasis with a composition containing Dead Sea salts, emollients such as jojoba oils etc. While none of the above references particularly teach the claimed oils i.e., coconut oil, Palm oil, olive, soybean oil etc., '889 suggest incorporating oils in general for providing skin

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conditioning benefits and provide relief from eczema, dermatitis, psoriasis etc.

Accordingly, absent showing criticality it would have been within the scope of a skilled artisan to choose an appropriate oil in the composition of Genis containing Dead Sea salts so as to provide the desired emolliency.

Response to Arguments

Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

Examiner has considered the unexpected results and the Declaration (1.132) submitted by applicants but not found persuasive. Examiner has cited new grounds of rejection. Further, a careful consideration of the unexpected results reveals that the results presented are not commensurate with the scope of the instant claims because instant claim 1 recites at least 50% of the Dead sea salts and while the results show that Dead sea salts at a concentration of 50% and 51% show an acceptable feel, excellent scent, a concentration of 55% (which still meets the claimed "at least 50%") however shows that the immediate effect on skin is not as intended, although the feel is acceptable, and also the suspension obtained is over thick with too much salts to feel. Further, even at a concentration of 51% Dead Sea salts in the composition, the feel, appearance, and the ability to remain in suspension without separation and finally the best intended effect on the skin appears to be a function of the concentration of soybean oil and beeswax at a concentration of 9% and 3% respectively (experiment 10), which is not commensurate with the claimed invention. With respect to the ultra fine

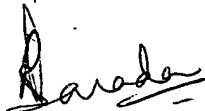
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particles, the new reference KR teaches high concentration as well as particles within the claimed range.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM -6.30 PM

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lakshmi S Channavajjala
Examiner
Art Unit 1615

July 20, 2005